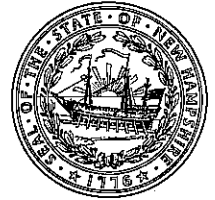




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 17, 2009

The Honorable Judith T. Spang, Chair
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

RE: HB 364 relative to municipalities' authority to contract with the department of environmental services for dam maintenance

Dear Chairman Spang:

Thank you for the opportunity to comment on HB 364, which amends RSA 31 and RSA 47 to authorize towns and cities, respectively, to contract with the Department of Environmental Services for the operation, maintenance, repair or reconstruction of municipally-owned dams. The bill is modeled after RSA 52:25, which currently authorizes Village Districts to contract with the Department to perform these activities on dams owned by Village Districts. The Department is concerned that, if the bill is enacted, it would add significantly to the work of the Department's Dam Maintenance Crew, and, without additional staff and equipment, would seriously delay much needed repair work on state-owned dams.

In 1975 the Legislature enacted Chapter 13 to amend RSA 52 to authorize the formation of Village Districts for the purpose of impounding water. At that time, bills were being introduced for the state to take ownership of dams in need of repair, with the state assuming the cost of repairs as well as the responsibility for future operation and maintenance. As an alternative, the Legislature authorized lake shore owners to form Village Districts, which could then raise money by taxation and appropriate the funds needed to operate, maintain and repair the dams. As part of that law, the Legislature authorized Village Districts to contract with the Department of Environmental Services for the operation, maintenance and repair of the dams, with the Village Districts paying the Department for all expenses incurred in performing this work. Since enactment of that law, thirteen Village Districts have been formed for the purpose of impounding water, and two of them have contracted with the Department for the annual operation and maintenance of the dams. Both of these dams have required major reconstruction over the past two years, which the Department has performed, delaying work needed on state-owned dams.

There are 378 dams owned by towns or cities in the State of New Hampshire. One hundred forty five of them have outstanding deficiencies that need to be corrected. If a fraction of these cities and towns chooses to contract with the Department to correct these deficiencies, the Department would be incapable of performing the work, without significantly impacting its work on state-owned dams, unless it added additional staff, including design engineers, dam operators and skilled construction personnel fully equipped with the necessary tools and machinery to perform the work.

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The State of New Hampshire, through its agencies, owns a total of 269 dams, most of which are well over 100 years old. Given the number of dams the state owns and the normal design life of these structures, the state must perform major repairs or reconstruction on an average of five dams per year. With the existing capacity of the Department's Dam Maintenance Crew, the backlog of work is up to 35 dams with known deficiencies in need of repair. If the bill is enacted and cities and towns choose to contract with the Department, this backlog of needed work on state-owned dams would grow if resources were not added to the Dam Maintenance Crew.

Another concern that the Department has with bill is the liability provision included in the proposed sections 31:103-a and 47:12-b. Under the proposed bill, the Department would assume all obligations and liabilities resulting from the construction, operation and maintenance work it performs under contract with cities and towns. The liability provision in the bill is identical to the liability provision currently in RSA 52:25 regarding the Department's work for Village Districts. However, this liability provision is inconsistent with other statutes regarding the state's liability, including RSA 99-D, RSA 541-B:14 and RSA 541-B:19. Under these statutes the Department can only be liable for the damages resulting from the acts or omissions of its agents to the extent permitted by law. To be consistent with the background law governing the state's liability, the Department recommends deleting the following two sentences from the new sections 31:103-a and 47:12-b proposed in the bill as well as the existing RSA 52:25: *"In return for such payments, the department of environmental services shall assume all obligations and liabilities resulting from such construction, operation, and maintenance. If the contract is terminated, such obligations and liabilities outstanding at the time of such termination shall be outstanding obligations and liabilities of the town (city)."*

Thank you for this opportunity to comment on this bill. Please call either me at 271-2958 or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,



Thomas S. Burack
Commissioner

cc: Representative David Bickford